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9. In an action against a railroad company for the death of a roundhouse "hostler" crushed to death between a building near the track and a tender on which he was riding in the usual way, but which was larger than any tender previously used in the yards, evidence *held* to justify submission to the jury of the issue of defendant's negligence.

RICHMOND, F. & P. R. CO. v. JOHNSTON et al.

January 12, 1905.

[49 S. E. 496.]

HIGHWAYS—POWER TO CONDEMN RAILROAD PROPERTY.

1. The general power to condemn land, conferred by Code 1887, secs. 1095, 1096, which authorizes the crossing of railroad tracks by a highway, is insufficient to authorize the condemnation for highway purposes of property purchased and used by a railroad company for station grounds and yards.

WARNER MOORE & CO. v. WESTERN ASSUR. CO.

January 12, 1905.

[49 S. E. 499.]

REFORMATION OF INSTRUMENT—INSURANCE POLICY—SUFFICIENCY OF EVIDENCE.

1. Evidence in a suit to reform a policy of insurance on a stock of goods, which described the goods as being in a building other than where situated, considered, and *held* sufficient to show that the error was made by mutual mistake, and to require a reformation of the policy.

NORFOLK RAILWAY & LIGHT CO. v. SPRATLEY.

January 12, 1905.

[49 S. E. 502.]

ELECTRICITY—INJURY FROM LIVE WIRE—PRESUMPTION OF NEGLIGENCE—REBUTTAL OF PRESUMPTION—EVIDENCE—SUFFICIENCY—PROXIMATE CAUSE—HARMLESS ERROR—EXPERT TESTIMONY—INSTRUCTIONS—DAMAGES.

1. Electric companies are not insurers against accidents, but they are held to a high degree of care in the construction and maintenance of their dangerous appliances.

2. The fact that a child was injured by picking up a live electric wire which had fallen to the sidewalk created a presumption of negligence on the part of the corporation owning and maintaining the wire.

3. In an action for injuries sustained by a child by picking up a live electric wire that had fallen to the sidewalk, the testimony of a lineman that he looked over the wires every day, and that between 6 and 7 o'clock in the morning of the day of the accident he had looked over the wire in question, and had found it all right, was not sufficient to remove the presumption of negligence on the part of the corporation owning and maintaining the wire.

4. The presumption of negligence which arises from an injury to a pedestrian in a public street from a broken electric wire is not overcome by testimony of

employés of the one owning and maintaining the wire that the wire was properly constructed and put up.

5. Though a question asked a witness and his answer thereto are improper, if the propounder's case has been completely made out otherwise the error is harmless.

6. Though exception to the testimony of a witness is well taken, if the same fact is proved by other witnesses without objection the error is harmless.

7. In an action for injuries to a child caused by his having picked up a live electric wire that had fallen to the sidewalk, a witness testified that two women were struck in the face by the wire, but not injured, and that the child grasped it at a point where it was not insulated, and that he thought he (the witness) took hold of it at a place where it was insulated without being hurt. *Held*, that such evidence did not show that a lack of insulation, and not the falling of the wire, was the proximate cause of the injury.

8. In an action for personal injuries, it was proper to permit the physician who attended plaintiff to testify as to the probable future effects of the injuries.

9. In an action for personal injuries, the jury may consider, in addition to the expense and pain and loss already incurred and suffered, such as will reasonably and probably result as a consequence.

10. On appeal in an action for personal injuries suffered by a child, the question whether there was error in permitting his mother to testify that she had spent \$7 for medicines was precluded by the maxim, "*De minimis non curat lex.*"

11. Where no exception was taken to certain testimony when the question was asked the witness, and no bill of exceptions subsequently asked for, and there was no mention of such an assignment of error in the petition to the Supreme Court for a writ of error, the admissibility of the testimony could not be considered on appeal.

12. The verdict of the jury in an action for personal injuries could not be disturbed on appeal where there was nothing to show that the jury were actuated by prejudice or partiality.

LAKE DRUMMOND CANAL & WATER CO. v. COMMONWEALTH.

January 12, 1905.

[49 S. E. 506.]

FORECLOSURE OF CORPORATE MORTGAGE—RIGHTS CONVEYED—IMMUNITY FROM TAXATION—CONSTRUCTION OF STATUTES—CONSTITUTIONAL PROVISIONS.

1. Code 1887, sec. 1233 [Ann. Code 1904, page 623], provides that a sale under a mortgage or trust deed executed by a corporation on all its works and property shall pass to the purchaser all the property of the corporation other than debts due to it, and on such conveyance "the said company shall *ipso facto* be dissolved," etc. Section 1234 [page 623] provides that the corporation created by or in consequence of such sale and conveyance shall succeed to "all such franchise rights and privileges and perform all such duties as would have been had or should have been performed by the first company but for such sale and conveyance." *Held*, that a sale on foreclosure of a deed of trust of all the property and franchise of the corporation did not pass to the purchaser the immunity